SURVEY OF RECENT DECISIONS

OF

THE HONORABLE PAUL J. KILBURG

U.S. Bankruptcy Court
Northern District of Iowa

September 15, 1994 -- October 1, 1995

Prepared by

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In re Bockes Brothers Farms, Inc. — 11 U.S.C. § 349(b)(3)
No. 93-60881KW, Chapter 11, 6/16/95 — F.R.B.P. 9023

The Unsecured Creditor's Committee moves for modification of the Court's Order of Dismissal to allow for consideration of pending fee applications and other administrative matters. HELD: The Court has broad discretion to alter or amend judgments. The Committee had failed to request the Court to retain limited jurisdiction prior to the hearing on the Motion to Dismiss. It is inappropriate to assert new arguments now. The Court refuses to retain jurisdiction as requested.

II. COURTS; PROCEEDINGS IN GENERAL, 2121-2200

A. In General, 2121-2150

In re Robert Duane Bliss — F.R.B.P. 9020
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On rule to show cause, Court considers elements of contempt for Debtor's failure to cooperate with Trustee's request for information as well as Debtor's and Debtor's attorney's failure to attend original hearing on rule to show cause. HELD: Debtor and Debtor's attorney now assure complete cooperation with the Trustee in the future. Therefore, no finding of contempt will be made. Sanctions are authorized for failure to appear at the original hearing. Debtor shall pay the Trustee's attorney fees.

In re Robert Duane Bliss — 11 U.S.C. § 521
No. 93-12048KC, Chapter 7, 12/1/94 — F.R.B.P. 9020

This matter is before the Court on a rule to show cause. Trustee sought access to information in order to obtain turnover of stock from Debtor's employer. Debtor failed to respond to Trustee. Trustee applied for an order to show cause. A few days before the hearing, Debtor gave some information to Trustee in response to the application. Neither Debtor nor his attorney of record appeared for the scheduled hearing. HELD: The Court may utilize both civil and criminal contempt powers in response to a violation of a court order, including both Debtor's and his counsel's failure to attend the hearing. Presence at the hearing is not excused by Debtor's response to the application for order to show cause. Debtor and his counsel of record are ordered to appear on 12/22/94 for hearing on contempt.

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Plaintiff seeks to amend petition by adding language attached to the motion. He requests the Court to allow the amendment without the necessity of filing a second copy of the amendment. HELD: In order to accommodate the computer, the amending party must file a separate copy of the amended document after the amendment is approved.

III. THE CASE, 2201-2360

C. Voluntary Cases, 2251-2280

In re Steven and Carmen Rieger 11 U.S.C. § 707(a)
No. 94-12006KC, Chapter 7, 5/19/95 (appeal filed)

IRS moves to dismiss the bankruptcy petition as filed in bad faith to avoid payment of taxes. It requests sanctions against Debtors for their continual abuse of the bankruptcy process. HELD: A petition may be dismissed for bad faith under § 707(a). Some factors indicating bad faith include intent to abuse the process or filing to frustrate legitimate efforts of creditors. Filing of successive petitions can indicate bad faith. This is Debtors' fifth bankruptcy case. Debtors have continuously used the bankruptcy process to assert meritless constitutional challenges to the Federal tax system. This constitutes bad faith and the petition is dismissed. Sanctions may be warranted under Rule 9011 where debtors file a petition in bad faith. Rule 9011 requires findings of frivolous filing and improper purpose. Debtors are ordered to pay $750 as sanction under Rule 9011. By way of further sanction, the automatic stay provisions of § 362 will not come into effect in any future case filed by Debtors without full hearing and an order by the Court on the issue of good faith.

In re Mary Anne Reed 11 U.S.C. § 707(b)
No. 94-61109KW, Chapter 7, 10/11/94

Debtor's schedules reflect monthly surplus income over expenses of $705. U.S. Trustee moves to dismiss under § 707(b) as Debtor is able to fund a Chapter 13 plan. Debtor asserts that she does not actually have the disposable income reflected by her schedules. HELD: Under § 707(b), a Chapter 7 petition should be dismissed if the debts are primarily consumer debts and granting relief would constitute substantial abuse of the Code. The 8th Circuit has held that the ability to fund a Chapter 13 plan can be sufficient reason to dismiss for substantial abuse under § 707(b). Debtor has not amended her schedules or offered sufficient evidence to show that her income and expenses are other than that portrayed in her original schedules. Debtor is granted 10 days to convert to Chapter 13 or the case will be dismissed.

D. Involuntary Cases, 2281-2310

In re KOCR-TV, INC. — 11 U.S.C. § 303, § 305
No. 95-11128KC, Chapter 7, 9/26/95

Debtor moves to dismiss involuntary petition. It asserts that it has no debts and no creditors and that the petitioning creditors hold claims against a related, but separate, corporation. Debtor states that those claims are currently being worked out. The creditors assert that Debtor and the other corporation are alter egos and Debtor is liable for their claims. HELD: An involuntary petition may be filed only by creditors holding claims that are not the subject of a bona fide dispute. The corporate veil may be pierced if the corporation is a mere shell or an alter ego of its controlling owner. Dismissal or abstention under § 305(a)(1) depends on the best interests of creditors and the debtor and is the exception rather than the rule. It may be appropriate where there is an out-of-court arrangement pending. Under these circumstances, dismissal is appropriate because the claims are subject to a bona fide dispute regarding piercing Debtor's corporate veil. Also, dismissal is in the best interests of creditors and Debtor as it will allow sale of Debtor's assets and out-of-court settlement with creditors from the proceeds of the sale.

In re Earl K. Kilberger — 11 U.S.C. § 303(h)(1), § 305(a)(1)
No. 94-11870KC, Chapter 7, 2/3/95

Creditor filed petition for involuntary bankruptcy. Debtor moves for abstention or dismissal. The main issue is whether Debtor is generally not paying his debts. HELD: Failure to pay a single debt does not establish that Debtor is generally not paying his debts unless there is fraud by Debtor or Creditor has inadequate remedies at state law. Abstention is governed by a best interests of debtor and creditors test. Courts should abstain in two-party disputes where adequate state law remedies exist. State remedies exist to avoid fraudulent transfers. The Court concludes that abstention is appropriate; case is dismissed.

IV. EFFECT OF BANKRUPTCY RELIEF; INJUNCTION & STAY, 2361-2490

B. Automatic Stay, 2391-2420

In re National Cattle Congress, Inc. — 11 U.S.C. § 362(a)(1), § 362(a)(3), § 362(b)(4), § 525
No. 93-61986KW, Chapter 11, 1/20/95 (appeal filed)
(published at 179 B.R. 588)

State Racing Commission revoked Debtor's racing license postpetition. Debtor asserts that this violated the automatic stay. Creditor's Committee further argues that the license revocation violated the § 525 prohibition against discriminatory treatment. Commission argues that § 362(b)(4) excepts this type of governmental action from the automatic stay. HELD: Debtor's racing license constitutes property of the estate. The Court must consider whether the license revocation is excepted from the stay as governmental action, § 362(b)(4), or whether it is stayed as action controlling property of the estate, § 362(a)(3). Both analyses require the Court to determine whether the Commission has exerted control over property of the estate. Courts must review the continuum of agency conduct on a case-by-case

basis to determine whether the agency has exercised control. In this case, the Court distinguishes between the Commission's hearing on and adoption of the resolution revoking the racing license and the actual act of revoking the license. The hearing itself did not violate the automatic stay. However, the revocation constitutes control over property of the estate. Because the revocation violates that automatic stay, it is void ab initio. The revocation proceedings did not violate the § 525 prohibition against discriminatory treatment.

C. Relief from Stay, 2421-2460

In re Earl and Fay Robertson — 11 U.S.C. § 362(d)(2)
No. 94-11876KC, Chapter 11, 2/10/95

Creditor seeks relief from stay to complete a sheriff's sale of Debtors' homestead. Debtors had listed the property for sale prepetition. Debtors wish to sell the property on the open market rather than at a sheriff's sale in order to generate a higher price and pay off the security interests. HELD: Considering commissions, taxes and costs of sale, Debtor's have no equity in the property. The property, however, is necessary for an effective reorganization to the extent that proceeds of the sale could pay off a junior mortgage. This case has only recently been filed and Debtors' exclusive period for filing a plan has not yet expired. The Court concludes that Debtors should have a reasonable amount of time to obtain a purchaser through the normal market process.

D. Enforcement of Injunction or Stay, 2461-2480

In re Mark Alan French — 11 U.S.C. § 362(h)
No. 95-20770KD, Chapter 7, 7/25/95

Debtor requests sanctions for Creditor's violation of automatic stay. Creditor posted a copy of Debtor's bankruptcy petition in Creditor's store window. HELD: The Court must determine whether Creditor willfully violated the automatic stay by looking at whether Creditor's conduct was unfair and would have an impact on Debtor's decision whether to repay. In these circumstances, this type of conduct constitutes harassment and coercive conduct prohibited by § 362. Actual and punitive damages are awarded for this intentional misconduct for a total judgment of $200.

V. THE ESTATE, 2491-2760

D. Liens and Transfers; Avoidability, 2571-2600

In re Rene Lee Meseraull — 11 U.S.C. § 522(f)
No. 94-11048KC, Chapter 7, 11/18/94 (aff'd N.D. Iowa 7/14/95) — Iowa Code § 561.21(3)

Similar to the issue in Shanahan filed 11/17/94 (see infra), Creditor objects to Debtor's attempt to avoid his lien on her homestead. The lien arose from a debt incurred for Creditor's work on improvement of Debtor's homestead after it was damaged by fire. HELD: Debtor may not avoid Creditors judicial lien on her homestead. Under Iowa Code sec. 561.21(3), Debtor's homestead would not be exempt from this type of debt if the lien were avoided.

In re Bradley L. Shanahan, Sr.
No. 94-11127KC, Chapter 7, 11/17/94
(appeal withdrawn 3/9/95)

11 U.S.C. § 522
Iowa Code § 561.16
§ 561.21(1)
§ 627.10
F.R.B.P. 4003(b)

Pursuant to § 522(f)(1), Debtor moves to avoid Creditor's judicial lien encumbering Debtor's homestead. Debtor owes Creditor for legal services provided between November, 1989 and September, 1991. This debt was reduced to judgment in March, 1993, after Debtor acquired his interest in the homestead property in June, 1992. Creditor argues Debtor cannot avoid the lien because the debt was contracted prior to the acquisition of the homestead, and the homestead may be sold to satisfy the lien pursuant to Iowa Code sec. 561.21(1). Debtor counters that Creditor's lien did not arise for purposes of sec. 561.21(1) until it was reduced to judgment in March, 1993. Debtor further argues that Creditor's lien should be avoided regardless of sec. 561.21(1) because the lien avoidance provisions of § 522(f) are governed by federal law. He asserts that a judicial lien can be avoided under § 522(f) despite a state law specification that the lien falls within an exception to the exemption statute. HELD: Creditor's lien arose for purposes of sec. 561.21(1) on the date the debt was contracted, not the date the debt was reduced to judgment. Further, a valid exemption under state law is a prerequisite to receiving relief through the lien avoidance provisions of § 522(f). As Debtor's homestead exemption does not operate against Creditor's preacquisition debt, Debtor may not utilize § 522(f) to avoid Creditor's lien.

In re Ricky Lee Booher
No. 94-10520KC, Chapter 13, 11/15/94

Joint Tenancy
Priority of Liens

Debtor's real estate was sold and the proceeds are being held by the Chapter 13 trustee. The Court must determine the priorities of several liens on the property. The main dispute is between 1) a Bank's interest in Debtor's assignment of his interest in property held jointly with his wife and 2) that wife's lien arising out of a later dissolution decree. HELD: Under principles of joint tenancy, Debtor's assignment is not binding on his wife's joint tenancy interest which is presumed to be a one-half interest. Similarly, judgment liens against Debtor attach only to his interest in the property. The former wife's dissolution lien attaches to the interest she held in the property prior to the dissolution. The decree transferred her one-half interest as joint tenant to Debtor encumbered by her lien. It has priority over the Bank's assignment interest and judgment liens against Debtor as Debtor never held that one-half interest unencumbered by the former wife's interest. The former wife is entitled to one-half of the proceeds of the sale to the extent of her lien. The remainder of the proceeds goes to the Bank and judgment lienors in accordance with the dates the liens were created.

H. Avoidance Rights, 2701-2740

2. Proceedings, 2721-2740

Reil v. Stanley (In re Ronald B. and Kaye A. Reil) — F.R.B.P. 7015
No. L92-00860W, Adv. L92-0094W, Chapter 11, 11/17/94 — F.R.C.P. 15
Iowa Code § 614.1(2)

Debtors filed a Motion for Leave to Amend the Complaint in September, 1994, seeking to add an emotional distress claim against Defendants. The complaint was filed in May, 1992; discovery was closed in July, 1994. Debtors claim the facts set forth in the original complaint provided sufficient notice to Defendants of the emotional distress claim. They further assert Defendants will not be prejudiced by granting the motion. Defendants claim the amendment adds a completely new cause of action, and that they will be prejudiced by the granting of the amendment. Defendants note that the amendment will require a reopening of discovery. HELD: Debtor's motion denied. The Bankruptcy Court has discretion in granting or denying motions to amend. Defendants have met their burden of showing why the motion should be denied. First, Debtors' original complaint did not provide the requisite fair notice to Defendants of the emotional distress claim. Second, granting the motion would further delay this already lengthy proceeding. Third, granting the motion would prejudice Defendants as they would need to conduct additional discovery at this late hour, requiring a reopening of discovery. Finally, Debtor's emotional distress claim may be barred by the statute of limitations.

VI. EXEMPTIONS, 2761-2820

In re Gary and Linda Ackerman — 11 U.S.C. § 522(f)(1)
No. 94-21846KD, Chapter 7, 4/12/95 — Iowa Code § 627.6(10)

Debtors filed a Motion to Avoid Lien on equipment claimed exempt as tools of the trade. Creditor asserts Debtors are not entitled to claim the equipment exempt because Mr. Ackerman's masonry business has been terminated and Mrs. Ackerman is not a mason eligible to claim masonry tools exempt. It also objects to exemption of a flatbed trailer and brick and block. HELD: Debtors intend to continue their masonry business and have jobs lined up for the future. Therefore, the business is ongoing and tools of the trade remain exempt. Mrs. Ackerman has helped in the business on the job site and with office duties. She is entitled to claim the equipment exempt as tools of the trade. A flatbed trailer used to transport materials is a tool of the trade. The brick and block used on various job sites are more appropriately categorized as general inventory and not tools of the trade.

In re Leon Francis Hageman — 11 U.S.C. § 522(f)
No. 94-60749KW, Chapter 7, 4/5/95 — F.R.B.P. 9006(b)
9024
Local Rule 25

Debtor filed a motion to avoid a judicial lien. No objection was filed prior to the bar date and the Court entered an order avoiding the lien on Debtor's homestead. Subsequently, the lien creditor filed a resistance to the motion to avoid lien. The attorney for the creditor stated that he believed the matter

would be set for hearing even without filing an objection. HELD: Local Rule 25 provides that a motion to avoid lien be accompanied by a notice that the motion will be granted if no objection is filed by the bar date. Debtor complied with this rule. The lien creditor failed to heed the notice and be cognizant of the Local Rule. This does not constitute excusable neglect which would be grounds to grant the creditor relief from the order.

In re Warren L. Caslavka — 11 U.S.C. § 541(c)(2)
No. 93-10188LC, Chapter 7, 2/24/95 — Iowa Code § 627.6(8)(e)
(published at 179 B.R. 141)

Debtor claims three IRA annuities exempt. Creditor and Trustee object. Debtor purchased the annuities by rolling over funds from exempt Profit Sharing Plan after his retirement, a few years prior to filing bankruptcy. He asserts that payments under the annuities are on account of age and exempt under Iowa law. In the alternative, he argues that the annuities are not property of the estate. Creditor and Trustee argue that Debtor's unrestricted access to the annuities makes them nonexempt and includable as property of the estate. HELD: The annuities are property of the estate because they have no restrictions on transfer. IRAs are generally not exempt in Iowa. However, the lump sum distribution from the Plan after Debtor retired was a payment from a pension or similar plan on account of age which is exempt under sec. 627.6(8)(e). The proceeds of the lump sum payment which Debtor placed in the annuities retain this exempt status.

In re Bradley Shanahan, Sr. — 11 U.S.C. § 522(f)(1)
No. 94-11127KC, Chapter 7, 2/24/95 — § 522(c)(1)

Debtor seeks to avoid judicial lien of ex-wife's Attorney arising from state court judgments in dissolution proceedings. The judgments were entered in 1991; Debtor acquired his homestead in 1992. Attorney asserts that Debtor's ex-wife, rather than the attorney, is the owner of the judgments. He also asserts that the lien is not avoidable because it is in the nature of support. HELD: Attorney has no ownership interest in the judgments for attorney fees. Therefore, no judicial lien exists in favor of Attorney which Debtor can avoid. Furthermore, judicial liens arising prior to acquisition of Debtor's homestead cannot be avoided because under Iowa law such liens are excepted from homestead exemption. A determination of whether a debt is in the nature of support under § 523(a) must be made through an adversary proceeding before the Court can rule on whether a lien cannot be avoided on that ground.

In re Emily Jean Versluis — Iowa Code § 561.20
No. 94-61420KW, Chapter 7, 1/5/95 — § 561.21(1)

Creditor objects to Debtor's claim that her residence is exempt. He asserts that Debtor and her former husband borrowed $30,000 prior to acquisition of their former residence. Their dissolution decree provided that each would be liable for one-half of the debt. Debtor used her half of the proceeds of the sale of the former residence to pay other debts and to invest in new residence. Creditor obtained a judgment against Debtor for this debt. HELD: The date of contracting the debt is the test to determine whether a debt is a preacquisition debt. Debtor's former homestead could have been sold to satisfy the preacquisition debt. Because the former homestead was not exempt from this debt, Debtor's current homestead is likewise nonexempt as to this debt. Further, it would be inequitable to allow Debtor's homestead exemption claim.

VII. CLAIMS, 2821-3000

B. Secured Claims, 2851-2870

In re Ricky Lee Booher — 11 U.S.C. § 365(b)
No. 94-10520KC, Chapter 13, 3/15/95 — § 506(c)
(appeal withdrawn 6/27/95) — Contempt

Realtors request payment of their commission from the proceeds of the sale of real estate. The real estate purchase agreement was executed prepetition; the sale was completed postpetition. Realtors are also subject to an order to show cause for failure to turn over $6,000 they retained of the sale proceeds. HELD: The prepetition Listing Agreement between Debtor and Realtors is valid and encompasses this sale. It is not an executory contract under § 365 because it was fully performed prepetition. Realtors are not entitled to payment from the sale proceeds because their efforts occurred prepetition and did not primarily benefit secured creditors or the bankruptcy estate. Because of Realtors' miscommunication with their attorneys, they had insufficient notice of the Court's turnover orders for their conduct to constitute contempt.

In re Ricky Lee Booher — 11 U.S.C. § 506(c)
No. 94-10520KC, Chapter 13, 2/6/95

Debtor's attorney requests payment of attorney fees from proceeds of sale of real estate. Attorney had facilitated closing of prepetition purchase agreement. Secured creditor objects to payment from the sale proceeds. HELD: Secured creditors must directly benefit from the Attorney's services. The movant must prove that the expenses were reasonable, necessary and beneficial to the secured creditor. The secured creditor benefitted because without the efforts of the Attorney, the property would have been forfeited and the secured creditor would have received nothing from the property. The Attorney's fees shall be paid from the proceeds to the extent the services directly related to the sale of the real estate.

C. Administrative Claims, 2871-2890

Lam v. Bossom (In re Dennis R. Weymiller) — 11 U.S.C. § 365(d)(1)
No. 94-20350KD, Adv. 95-2039KD, Chapter 7, 9/26/95 — § 365(h)(1)
Iowa Code § 622.32(3)
§ 562.5

Debtor leased farm land to Defendant under an incomplete and unsigned form farm lease with a three-year term. After Debtor filed for bankruptcy, Defendant decided to farm elsewhere and got Debtor's permission to leave. Some of Defendant's corn remained in the fields which Defendant later removed. Also, Defendant continued to store hay and haylage. Trustee seeks to recover lease payments. HELD: The lease document is not enforceable pursuant to the statute of frauds. Defendant is considered a tenant at will of agricultural land. Normally, such agricultural tenancies terminate as of March 1 following written notice before September 1. Defendant's agreement with Debtor was ineffective to terminate the tenancy as such agreement must be made with the Trustee as representative of the estate. However, the Trustee's failure to assume the lease by 9/29/94, the date set by the Court for assumption of executory

contracts, constituted a rejection of the lease under the Bankruptcy Code. Defendant is liable for rent to that date, for storage costs for the hay and haylage, and for rent while the corn remained in the fields after that date.

D. Proof; Filing, 2891-2920

In re Cedar Valley Feeds, Inc. — 11 U.S.C. § 502(a)
No. L-91-00266C, Chapter 7, 5/19/95 — Rule 3001(f)

IRS objects to the Final Report which disallowed the IRS's claim for lack of documentation. Trustee asserts that the proof of claim filed was insufficient and that the estimated liability for FUTA tax had no basis in fact. Neither the IRS nor Trustee offered any evidence. HELD: A proof of claim constitutes prima facie evidence of the validity and amount of the claim. To rebut a facially valid claim, the objecting party must produce evidence that the claim is incorrect. If the claim is rebutted, the claimant must prove the validity of the claim by a preponderance of the evidence. The IRS Proof of Claim was timely filed and need not be further documented as it was based on federal statutes, not a writing. Therefore, it is facially valid. Trustee has failed to rebut the IRS's prima facie case.

E. Determination, 2921-2950

Eckhart v. Simon (In re Carl and Diane Simon) — 11 U.S.C. § 506
No. 94-21591KD, Adv. 94-2173KD, Chapter 12, 9/26/95 — Iowa Code § 554.9203

Plaintiffs claim a security interest in cows located on Debtor's farm pursuant to a security agreement entered into with Debtor's brother, Ralph, who died shortly after executing the agreement. The agreement secured Plaintiffs' litigation expenses incurred in representing Ralph in a counterclaim alleging veterinary malpractice. That litigation was unsuccessful. At the time of that trial, in depositions and in trial testimony, Debtor testified that Ralph owned the cattle. He now asserts that he actually owned the cattle prior to the trial and the execution of Plaintiff's security interest. He claims that Ralph transferred the cattle to him as he incrementally took over Ralph's debts. Ralph did execute a Bill of Sale shortly before his death, but subsequent to the security agreement with Plaintiffs. HELD: Debtor's current testimony is not credible in light of his testimony in the earlier trial. At the time Ralph executed the security agreement, Ralph owned the cows. Debtor now owns the cows pursuant to the Bill of Sale, subject to Plaintiffs' valid security agreement.

F. Priorities, 2951-3000

In re Marlin and Diane Nichols — 11 U.S.C. § 101(15), 105
No. L88-00954W, Chapter 13, 9/28/94 — 362, 541(a)
1305, 1306
F.R.B.P. 3001(d)

The IRS seeks to recover a portion of the proceeds of the sale of Debtors' house. The sale was provided for in Debtors' Chapter 13 plan. The IRS argues that it has a claim to the proceeds, arising from postpetition taxes which the Debtors failed to pay, which is superior to claims for Trustee's fees, Debtors' attorney's fees, and the Iowa Department of Revenue's tax claim. The IRS filed Notices of Federal Tax Liens (NFTLs) for the postpetition taxes, but did not file an amended proof of claim to include such taxes in the Chapter 13 plan. HELD: Pursuant to § 362(a), the IRS violated the automatic stay by creating and perfecting liens against property of the estate (i.e., the Debtors' house). As a result of this violation, the IRS' tax liens are invalid. In addition, the NFTLs do not qualify as an amended proof of claim, which is required for recognition under the Chapter 13 plan. Although its tax liens are invalid and it failed to file an amended proof of claim, the IRS is entitled to retain the monies it received under the plan pursuant to the NFTLs, and may seek payment on any deficiencies after the close of the Chapter 13 case. Trustee and Debtors' attorney may retain the monies they received under the plan as these claims are accorded administrative expense treatment and are given priority over the tax claims of the IRS and the Iowa Department of Revenue.

VIII. TRUSTEES, 3001-3020

IX. ADMINISTRATION, 3021-3250

A. In General, 3021-3060

In re Commercial Millwright Service Corp. — 11 U.S.C. § 364(c)(1)
No. 95-60007KW, Chapter 11, 9/18/95 — § 102(1)

IRS requests modification of the Court's order approving Debtor's application to grant Creditor a superpriority lien under § 364. IRS did not receive notice at the local office of the U.S. Attorney. It asserts it is entitled to adequate protection of its liens on Debtor's property. Debtor argues that the IRS liens had previously been satisfied. Further, even if IRS liens still exist, the IRS is adequately protected. HELD: The requirement of notice for the § 364 authority to obtain credit cannot be overlooked. Due process requires that parties have notice with adequate opportunity to object. The order is rescinded; hearing will be set on the issues of the extent of IRS' lien and adequate protection.

In re Donald and Jeri Boyce — 11 U.S.C. § 722
No. 95-20057KD, Chapter 7, 6/16/95 — § 506(a)

Debtors seek to redeem a car by paying Creditor the amount of its allowed secured claim. The parties dispute the extent of the secured claim as determined by valuation of the car, which had previously sustained hail damage. Debtor values the car at $500; Creditor values it at $2,125. HELD: The

touchstone in determining the value of collateral is the standard of commercially reasonable disposition of the property by the lender, i.e. gross sales price less costs of repair and costs of sale. The Court concludes that neither of the parties' valuations correctly reflects the hail damage. It holds that the value is $1,250.

B. Possession, Use, Sale, or Lease of Assets, 3061-3100

Eide v. Trolard (In re David Good) — 11 U.S.C. § 542
No. L89-01577W, Adv. No. L90-0187W, Chapter 7, 11/28/94 — 28 U.S.C. § 1961
Iowa Code § 535.3

Plaintiff received a $10,000 judgment pursuant to a turnover action. He filed a Motion to Amend Judgment, requesting the Court to determine the rate of interest on the judgment and the date from which interest is to accrue. Plaintiff asserts that interest should be granted from the date of the commencement of the action, September 27, 1990, at a rate of ten percent in accordance with Iowa Code sec. 535.3. Defendant claims no interest should be awarded as the property subject to turnover was available for the Trustee to collect at any time. Further, Defendant argues, the property was not sold and reduced to cash until March 29, 1994. HELD: Plaintiff is entitled to prejudgment interest at the rate provided for in 28 U.S.C. § 1961. Interest shall accrue from the date Plaintiff filed the complaint in this adversary proceeding, September 27, 1990. The Bankruptcy Court has discretion to determine both the rate for prejudgment interest and the date from which interest is to accrue.

Eide v. Trolard (In re David R. Good) — 11 U.S.C. § 542(a)
No. L89-01577W, Adv. L90-01987W, Chapter 7, 9/21/94 — F.R.C.P. 56(c)

Defendant had an ongoing business relationship with Debtor buying and selling commemorative guns. Trustee seeks to recover proceeds from sales Defendant made of guns which were property of the Debtor. Trustee moves for summary judgment. HELD: Issues of fact exist which preclude summary judgment regarding the sale of certain sets of Texas Sesquicentennial Winchester rifles. However, it is undisputed that Defendant sold eleven Winchester Model 70 rifles which were Debtor's property at the commencement of the case. Property of the estate which is in the possession of another is subject to turnover under § 542. Defendant is not entitled to a sales fee associated with the sale of the rifles. The entire sales proceeds of $10,000 is recoverable by Trustee.

C. Debtor's Contracts and Leases, 3101-3130

In re United States Hockey League — 11 U.S.C. § 365
No. 95-60891KW, Chapter 11, 9/14/95

Debtor operates a hockey league. Keystone Hockey, Inc. operates the Wisconsin team through a franchise agreement with Debtor. After Debtor intervened to pay team expenses and void the trade of a player, Keystone filed a lawsuit in Wisconsin state court. That court granted an injunction against Debtor's termination of the franchise agreement and a judgment for attorney fees. Debtor then filed for Chapter 11 protection. It seeks to reject the franchise agreement under § 365. Keystone argues that the

state court injunction prohibits rejection of the agreement and that the agreement is not an executory contract. It also asserts that Debtor is acting in bad faith. HELD: Both parties have continuing obligations under the franchise agreement. Therefore, it is an executory contract. The Wisconsin judgment does not make the contract nonexecutory or prohibit Debtor's rejection of the contract under the Bankruptcy Code. Debtors must satisfy the business judgment test by showing that rejection will benefit general unsecured creditors. Debtor is concerned about continuing litigation with Keystone, Keystone's attempts to move the team and other franchisees' wishes regarding rejection of the Keystone franchise. Rejection passes the business judgment test. Debtor's decision is not so unreasonable that it could only be indicative of bad faith.

E. Compensation of Officers and Others, 3151-3250

1. In General, 3151-3154

In re Marlin and Diane Nichols — 11 U.S.C. § 1326(c)
No. L88-00954W, Chapter 13, 6/5/96 — 28 U.S.C. § 586(e)(2)

Trustee asserts the right to a fee on an amount paid directly to the IRS from the proceeds of the sale of property made pursuant to Debtors' confirmed plan. The IRS demanded direct payment at the closing. The remainder of the proceeds were paid to creditors and administrative claimants through Trustee. HELD: Chapter 13 debtors may make direct payments to creditors. The standing trustee collects a fee only from the funds the trustee actually receives. The Code's preference is that, in general, payments will be paid through the trustee unless the plan states otherwise. Debtors' plan does not explicitly call for direct payment to creditors from the sale proceeds. Thus, the plan contemplates payment through Trustee on which Trustee would collect a fee. Trustee is entitled to collect her fee on the proceeds paid to the IRS directly as envisioned by the plan.

X. DISCHARGE, 3251-3440

B. Dischargeable Debtors, 3271-3340

2. Determination of Dischargeability, 3311-3340

In re William P. Krapfl — 11 U.S.C. § 350(b)
No. 94-11535KC, Chapter 7, 8/4/95 — § 727(d)(1)
F.R.B.P. 2004

Bank filed a motion to reopen and a motion for examination of Debtor under Rule 2004 in order to pursue revocation of Debtor's discharge. It alleges that Debtor fraudulently disposed of secured cattle. Debtor filed a motion to close the case. He asserts that no cause exists to reopen the case because the Bank failed to timely object to discharge while the case was open. HELD: Predischarge is the time to request a Rule 2004 exam. In order to revoke a discharge for fraud, the Bank must prove the discharge was procured through fraud and the Bank did not know of the fraud until after the discharge. The Bank may not conduct a Rule 2004 exam now as it had failed to avail itself of the procedure prior to discharge

when it had suspicions regarding the disposition of the cattle. Knowledge of the alleged fraud is fatal to a motion seeking revocation of discharge under § 727(d)(1).

C. Debts and Liabilities Discharged, 3341-3410

Trickey v. Trickey (In re Benjamin J. Trickey) 11 U.S.C. § 523(a)(5)
No. 94-10667KC, Adv. 94-1121KC, Chapter 7, 9/20/95

Plaintiff, Debtor's former spouse, asserts that certain awards in the parties' dissolution decree constitute support. The awards were listed in a paragraph in the stipulation labeled "Personal Property Award." It called for payments of interest for a period of time and eventual lump sum payments on certain dates. HELD: The Court looks at the surrounding circumstances to determine the function the award was intended to serve at the time of the entry of the dissolution. Important factors include the language of the agreement and the parties' financial circumstances at the time. In these circumstances, the award was a property distribution and not excepted from discharge under § 523(a)(5).

Cumis Insurance Society, Inc. v. Kaufman 11 U.S.C § 523(a)(2)
Robey v. Kaufman (In re Mark William Kaufman)
No. 94-20551KD, Adv. 94-2070KD, 94-2094KD, Chapter 7, 9/18/95

Cumis asserts that its claim should be excepted from discharge as arising out of Debtor's fraudulent check kiting scheme. Robey likewise claims Debtor engaged in fraud inducing him to cash two checks which were returned for insufficient funds. Debtor responds that he intended to cover the checks with cash he anticipated receiving from a friend involved in the entertainment business. HELD: Debtor's conduct in writing checks on several different accounts and inducing Robey to cash checks constitute misrepresentation by silence or false pretense under § 523(a)(2)(A). Debtor admitted he knew he was writing bad checks to cover bad checks. His asserted intent to make good on the checks through funds to be received from a friend was not reasonable. Cumis and Robey relied on Debtor's false pretense to cash the checks and thereby sustained injury. The debts are nondischargeable as procured through fraud.

Callahan v. Callahan (In re Carol Ann Callahan) 11 U.S.C. § 523(a)(5)
No. 94-11572KC, Adv. 94-1172KC, Chapter 7, 8/29/95 F.R.B.P. 4007(b)

Debtor's ex-husband claims that $300 awarded to him in their dissolution decree is nondischargeable as support. The payments were labeled "Rehabilitative Alimony" in the decree. Debtor asserts that the payment is truly a property settlement. She also argues that Plaintiff's complaint to determine dischargeability was not timely filed. HELD: The complaint is not untimely filed. According to Rule 4007(b), a complaint under § 523(a)(5) may be filed at any time. The Court must determine the function the obligation was intended to serve, considering many factors including the language of the decree and the parties' financial circumstances at that time. This case is the rare instance where the language of the decree does not reveal the true situation. The totality of the circumstances reveals that the $300 obligation was a property settlement. The claim is dischargeable.

United States v. Rausch (In re Robert and Mary Rausch) 11 U.S.C. § 523(a)(6)
No. 94-60633KW, Adv. 94-6098KW, Chapter 7, 5/31/95

FmHA asserts that Debtors committed willful and malicious injury by allowing collateral farm property to diminish in value by storing thousands of waste tires on the property and by failing to make real estate contract payments. It argues that this renders the debt nondischargeable under § 523(a)(6). Debtors assert that they had no intention of harming the farm and believed the storage would be temporary or they could pursue a tire disposal business. HELD: FmHA must prove that Debtors' conduct was headstrong and knowing and almost certain to cause financial harm. Courts focus on the amount of knowledge debtors have of the certainty of harm in finding malice under § 523(a)(6). Considering multiple DNR warnings that the tire storage violated state regulations, Debtors knew that continuing to receive waste storage was harmful to the property. Debtors' hope that they could start a recycling business is not a defense. They were abundantly aware that location of tires on their property constituted an extremely dangerous condition and would result in significant cleanup costs. The debt to FmHA is nondischargeable.

Pierce v. United States (In re Donald and Mary Ann Pierce) — 11 U.S.C. § 523(a)(1)(C)
No. 93-61552KW, Adv. 94-6041KW, Chapter 7, 4/12/95 — § 523(a)(1)(B)
(appeal filed)

Debtors seek a determination of dischargeability of certain federal income taxes and related prepetition interest. The IRS asserts that these obligations are nondischargeable because Debtors have willfully attempted to evade and defeat such taxes. Further, it argues that Debtors failed to file a return for one of the tax years. HELD: The tax return filed by Debtors for 1986 was sufficient to constitute a filed return under § 523(a)(1)(B)(i). The IRS has proved that Debtors attempted to evade these taxes based on their pattern of nonpayment, filing late returns, filing of frivolous lawsuit and invalid common law liens, serial bankruptcy filings to avoid IRS collection, failure to pay property taxes thereby losing their equity in the property, and transfers of property to trusts. Therefore, the tax debt is nondischargeable under § 523(a)(1)(C). Postpetition interest and penalties as well as prepetition interest on the nondischargeable debt are likewise nondischargeable. Prepetition penalties are discharged.

Cumis Ins. Society v. Kaufman (In re Mark William Kaufman) — 11 U.S.C. § 523(a)(2)(A)
No. 94-20551KD, Adv. 94-2070KD, Chapter 7, 4/6/95 — F.R.B.P. 7056

Plaintiff moves for summary judgment on its claim that a default judgment against Debtor is nondischargeable as arising from fraud or misrepresentation under § 523(a)(2). Plaintiff alleges that Debtor was involved in a check kiting scheme. Debtor argues that he did not intend to deceive as the check writing was the result of a failed business transaction. HELD: Plaintiff cannot meet the standards for granting summary judgment. Fraud is generally not susceptible to summary judgment. Material facts are in dispute. The Court further notes that Debtor failed to file a timely response to the motion for summary judgment as required by the Federal Rules of Procedure but will not impose sanctions for that oversight.

Berger v. Karr (In re Lonny and Terrill Karr) — 11 U.S.C. § 523(a)(2)(B)
No. 94-110547KC, Adv. 94-1082KC, Chapter 7, 4/4/95

Berger, Debtor's partner in a farming business, claims that he guaranteed a partnership debt based on false information in a financial statement Debtor gave to a bank. The statement was not signed and the bank discarded it, relying on Berger's financial condition in granting the partnership a loan. Berger claims that

the debt should be nondischargeable because he relied on Debtor's false financial statement. HELD: The statement was materially false. Debtor's reckless disregard for the accuracy of the statement establishes an intent to deceive. However, if Berger placed any reliance on the statement in renewing the partnership note, such reliance would be unreasonable in the circumstances. The debt is dischargeable.

Waverly Sales Co. v. Wood — 11 U.S.C § 523(a)
(In re Wesley E. Wood), (In re Glenn W. Wood, Jr.)
No. 93-60230LW, 93-60364LW, Adv. 93-6080KW, 93-6081KW,
Chapter 7, 1/13/95

On motion to amend judgment, Plaintiff requests that the Court determine the total amount of debt which the Court previously found to be nondischargeable. It also requests a finding that Debtors are jointly and severally liable. Because of Debtors' fraudulent conduct, Plaintiff was sued by third parties and settled by paying $52,000. It also incurred more than $52,000 attorney fees. Each Debtor made fraudulent sales of approximately $46,000. HELD: The measure of damages for indemnity is the amount one party is compelled to pay as a consequence of another's negligence or other wrong, including the costs of defense. Debtors are liable for the settlement amount plus the attorney fees Plaintiff incurred. Vicarious liability exists between parties acting in concert. There is sufficient evidence of a common plan or purpose between Debtors and their former employer to impose joint and several liability on Debtors for the total amount of the judgment.

Waverly Sales Co. v. Wood — 11 U.S.C § 523(a)(2)(A)
(In re Wesley E. Wood), (In re Glenn W. Wood, Jr.) — § 523(a)(6)
No. 93-60230LW, 93-60364LW, Adv. 93-6080KW, 93-6081KW,
Chapter 7, 10/5/94

Debtors sold cattle which belonged to third parties who had placed the cattle at the livestock feeding operation where Debtors worked. Plaintiff, a livestock auction company, purchased the cattle relying on Debtors' representations that they owned the cattle. The true owners of the cattle sued Plaintiff in state court and recovered from Plaintiff. Plaintiff asserts that Debtors are liable to it for contribution for amounts which are nondischargeable under § 523(a)(2)(A) and/or § 523(a)(6). HELD: Debtors admit that they misrepresented their ownership of the cattle but urge that their liability is dischargeable because they did not financially profit from the sales. The Court concludes that Debtors "obtained" money through their misrepresentation and the debt is nondischargeable. Debtors argue that their mere conversion of the cattle did not constitute willful and malicious injury under § 523(a)(6). The Court concludes that Debtors' conduct was willful and malicious. The debts are nondischargeable.

D. Effect of Discharge, 3411-3440

Primmer v. United States Bank — 11 U.S.C. § 350(b)

(In re Ellsworth J. and Tammy M. Primmer) — § 524(c)(1)
No. L90-00325C, Adv. L90-0036C, Chapter 7, 11/2/94

Debtors seek to reopen their Chapter 7 bankruptcy case in order to obtain Court approval to reaffirm Tammy Primmer's discharged student loans. Discharge was entered April 13, 1994; the case was closed

April 29, 1994. Debtors wish to reaffirm the debt in order to obtain additional student loans to complete Ms. Primmer's education. HELD: Motions to reopen bankruptcy cases under § 350(b) should be liberally granted. However, if the underlying request for relief will ultimately be resolved against the movant, the Court may refuse to reopen the case. Reaffirmation agreements are governed by § 524(c) which allows such agreements only if made before the granting of discharge. Because the reaffirmation agreement was made more than six months after discharge, it violates § 524(c)(1) and cannot be approved. As no relief could be afforded the Debtors in reopening the case, the request to reopen is denied.

XI. LIQUIDATION, DISTRIBUTION, AND CLOSING, 3441-3460

See In re William P. Krapfl in Section X.B.2, on page 12.

See Primmer v. United States Bank in Section X.D, on page 16.

XII. BROKER LIQUIDATION, 3461-3480

XIII. ADJUSTMENT OF DEBTS OF A MUNICIPALITY, 3481-3500

XIV. REORGANIZATION, 3501-3660

D. Administration, 3621-3650

In re National Cattle Congress — 11 U.S.C. § 1104(a)
No. 93-61986KW, Chapter 11, 4/20/95

Unsecured Creditors Committee moves for appointment of Chapter 11 Trustee for cause and in the best interests of creditors and the estate. Its concerns include loss of creditor confidence, Debtor's political reputation, transactions with insiders and lack of a plan of reorganization. HELD: Appointment of a trustee is an extraordinary remedy. Appointment for cause requires a finding of gross mismanagement and extreme ineptitude. The "best interests" test looks at a variety of factors to determine the practical realities and necessities of the case. Conflicts of interest and questionable transactions have not clearly occurred. Nothing else in the record supports appointment of a trustee for cause or in the best interests of the estate.

XV. ARRANGEMENTS, 3661.100-3661.999

XVI. COMPOSITIONS, 3662.100-3670

XVII. ADJUSTMENT OF DEBTS OF FAMILY FARMER, 3671-3700

XVIII. INDIVIDUAL DEBT ADJUSTMENT, 3701-3740

In re David and Elaine Hegg — 11 U.S.C. § 109(e)
No. 95-20920KD, Chapter 13, 8/29/95 (appeal filed) — § 1325(a)(6)

§ 1325(a)(3)

Creditor and Trustee object to confirmation of Debtors' plan which would be funded entirely with proceeds of a lawsuit scheduled for trial in November, 1995. HELD: The regular income requirement of § 109(e) calls for stability and regularity of income in excess of regular expenses. The § 1325 feasibility requirement is not met where consummation of the plan hinges on a speculative, contingent future event. The good faith requirement also looks to the Debtors' ability to pay. The plan cannot be confirmed because Debtors do not have regular income beyond their expenses and recovery from the lawsuit is speculative. The plan may be merely a delaying tactic to stymie creditor activity during the pendency of the lawsuit.

In re Daniel and Rhonda Olson
No. L90-00423W, Chapter 13, 10/14/94

11 U.S.C. § 1322(c)
§ 1329(c)
§ 1325(a)
§ 1307(c)

More than four years after their original plan was confirmed, Debtors filed an amended plan providing for an additional 60 months of payments. The Trustee and the IRS object to the plan. The IRS also moves to dismiss. HELD: The U.S. Attorney's prior representation of Debtor does not constitute an impermissible conflict of interest regarding the Assistant U.S. Attorney's representation of the IRS. Debtors' absence at the hearing is not of consequence to a determination of the issues. Debtors' amended plan which would extend the plan more than 60 months after the first payment under the original plan cannot be confirmed. Also, the plan is not feasible in light of Debtors' lack of employment and inability to pay priority claims in full within the plan. Immediate dismissal is appropriate.

XIX. REVIEW, 3741-3860

XX. OFFENSES, 3861-3863

DECISIONS OF THE HONORABLE PAUL J. KILBURG
April 23, 1993 -- September 15, 1994

I. IN GENERAL, 2001-2120

B. Constitutional and Statutory provisions, 2011-2040

In re Dean and Barbara Calease, Ch. 7, No. 93-60698LW (Bankr. N.D. Iowa Sept. 20, 1993) (avoidance of lien arising from pre-enactment after-acquired property clause)

C. Jurisdiction, 2041-2080

Deklotz v. Peoples Bank & Trust (In re Robert and Faye Deklotz), Ch. 7, No. L-87-00021C, Adv. 93-1007LC (Bankr. N.D. Iowa Sept. 1, 1993) (lender liability claim which accrued prepetition is barred)

D. Venue; Personal Jurisdiction, 2081-2100

Hager v. Bockes Brothers Farms (In re Bockes Brothers Farms), Ch. 11, No. 93-60881KW, Adv. 93-6127KW (Bankr. N.D. Iowa Sept. 7, 1993) (remand or abstention in creditor's action to recover forfeited real estate)

II. COURTS; PROCEEDINGS IN GENERAL, 2121-2200

A. In General, 2121-2150

Bockes Brothers Farms v. Farmland Financial (In re Bockes Brothers Farms, Inc.), Ch. 11, No. 93-60881KW, Adv. 93-6104KW (Bankr. N.D. Iowa March 4, 1994) (protective order re deposition of party's attorney)

B. Actions and Proceedings in General, 2151-2180

Farmers Savings Bank & Trust v. Caslavka (In re Lon Michael Caslavka), Ch. 7, No. 92-12304LC, Adv. 93-1049LC (Bankr. N.D. Iowa March 31, 1994) (Federal rate of interest applied post-judgment)

Hoth v. Wells (In re William E. Wells, Jr.), Ch. 7, No. L-90-02393C, Adv. L-92-0076C (Bankr. N.D. Iowa March 29, 1994) (dischargeability re misrepresentation)

III. THE CASE, 2201-2360

B. Debtors, 2221-2250

In re Mary Ann Pierce, Ch. 13, No. 94-60737KW (Bankr. N.D. Iowa July 27, 1994) (appeal withdrawn 8/26/94) ("chapter 20"; spouse's income used to fund debtor's Chapter 13 plan)

In re Darrin T. Palmer, Ch. 13, No. 93-21509KD (Bankr. N.D. Iowa Dec. 1, 1993) (eligibility for Chapter 13, impact of postpetition reduction of debt)

In re Leon and Karen Funke, Ch. 12, No. 93-21255KD (Bankr. N.D. Iowa Oct. 21, 1993) (farmer debtor eligibility; successive filings improper)

In re James and Julie Eckenrod, Ch. 13, No. 93-60178LW (Bankr. N.D. Iowa Aug. 19, 1993) (§ 109(e))

In re Paul and Teresa Bishop, Ch. 7, No. 93-60176LW (Bankr. N.D. Iowa June 29, 1993) ("engaged in farming")

IV. EFFECT OF BANKRUPTCY RELIEF; INJUNCTION & STAY, 2361-2490

B. Automatic Stay, 2391-2420

Larken Hotels v. State of North Dakota (In re Larken Hotels Limited Partnership), Ch. 11, No. 94-10388KC, Adv. 94-1027KC (Bankr. N.D. Iowa April 6, 1994) (temporary injunction of criminal proceedings denied)

In re Ricky and Cristie Drahos, Ch. 13, No. 93-60924KW (Bankr. N.D. Iowa Oct. 5, 1993) (debtors' home necessary for effective reorganization)

C. Relief from Stay, 2421-2460

In re Rausch Brothers Partnership, Ch. 11, No. L90-00151W (Bankr. N.D. Iowa Sept. 14, 1994) (real estate contract forfeiture included irrigation equipment)

In re Leonard W. and Maryan Dostal, Ch. 11, No. 94-10108KC (Bankr. N.D. Iowa March 31, 1994) (relief from stay based on bad faith in filing petition)

In re IGWT Trust, Ch. 11, No. 93-61439KW (Bankr. N.D. Iowa Sept. 7, 1993) (lift stay regarding forfeited real estate)

In re Terry L. Gearhart, Ch. 7, No. 93-10494LC (Bankr. N.D. Iowa Aug. 18, 1993) (no authority to reimpose stay once it has been lifted)

In re Bockes Brothers Farms, Inc., Ch. 11, No. 93-60881KW (Bankr. N.D. Iowa July 26, 1993) (forfeiture of real estate contract completed prepetition)

In re Karl J. Zweibahmer, Ch. 11, No. 93-60650LW (Bankr. N.D. Iowa May 20, 1993) (stay applies to appellate proceedings)

D. Enforcement of Injunction or Stay, 2461-2480

In re Jeffrey Roche, Ch. 7, No. 93-10546LC (Bankr. N.D. Iowa June 10, 1993) (no actual damages proven from violation of stay)

V. THE ESTATE, 2491-2760

C. Property of Estate in General, 2531-2570

First National Bank v. Cregar's Autowerks (In re Cregar's Autowerks, Inc.), Ch. 7, No. L92-00872C, Adv. 92-1181LC (Bankr. N.D. Iowa May 12, 1994) (abandonment of car to equitable owner)

In re Bockes Brothers Farms, Ch. 11, No. 93-60881KW (Bankr. N.D. Iowa Sept 16, 1993) (extent of lien in property repossessed and sold prepetition)

In re Gordon and Mary Jo Kunkle, Ch. 7, No. 93-60077LW (Bankr. N.D. Iowa June 4, 1993) (ERISA-qualified plan is not property of the estate)

D. Liens and Transfers; Avoidability, 2571-2600

In re Cheryl K. Parman, Ch. 7, No. 94-10592KC (Bankr. N.D. Iowa Sept. 2, 1994) (homestead is exempt from ex-spouse's claim under dissolution decree)

In re Paul and Teresa Bishop, Ch. 7, No. 93-60176LW (Bankr. N.D. Iowa Oct. 21, 1993) (novation extinguishes purchase money interest)

E. Preferences, 2601-2640

Lam v. Weymiller (In re Dennis R. Weymiller), Ch. 7, No. 94-20350KD, Adv. 94-2055KD (Bankr. N.D. Iowa Sept. 14, 1994) (mortgage and payments to parents avoided as preferential transfers)

Currell v. McCool & McCool (In re Charles Joseph Matheny), Ch. 7, No. L-92-00520-C, Adv. 93-1059LC (Bankr. N.D. Iowa Aug. 10, 1993) (non-bankruptcy legal fees recovered)

Henry v. American Trust & Savings (In re McGregor Harbor, Inc.), Ch. 7, No. L-92-00234D, Adv. 92-2239LD (Bankr. N.D. Iowa May 28, 1993) (Deprizio analysis followed)

F. Fraudulent Transfers, 2641-2670

Hager v. Bockes Brothers Farms (In re Bockes Brothers Farms), Ch. 11, No. 93-60881KW, Adv. 93-6127KW (aff'd N.D. Iowa 4/26/94; appeal dismissed 8th Cir. 5/3/95) (forfeiture of real estate contract as fraudulent transfer)

VI. EXEMPTIONS, 2761-2820

In re Joseph and Marlene Stevens, Ch. 7, No. 94-10178KC (Bankr. N.D. Iowa July 27, 1994) (exemption of garden tractor as motor vehicle)

In re Lavern and Dorothy Kahler, Ch. 7, No. 94-10285KC (Bankr. N.D. Iowa June 15, 1994) (exemption of farm equipment)

In re T.C. Ersepke, Ch. 7, No. L-92-00541LD (Bankr. N.D. Iowa Nov. 30, 1993) (whether dissolution judgment can constitute exempt homestead property)

In re Alan Ray Herron, Ch. 7, No. 92-62288LW (Bankr. N.D. Iowa Nov. 5, 1993) (cause for reopening case; objection to avoidance of judicial lien)

In re John and Mary Weber, Ch. 7, No. 93-11093KC (Bankr. N.D. Iowa Oct. 4, 1993) (invasion of homestead exemption for pre-acquisition debt)

In re David and Laura Winkowitsch, Ch. 7, No. 93-60712LW (Bankr. N.D. Iowa Sept. 20, 1993) (following Streeper, objection to avoidance of lien from pre-acquisition debt)

In re Jerry and Carol Jacobsen, Ch. 7, No. 93-10724LC (Bankr. N.D. Iowa Sept. 8, 1993) (mobile home qualifies for homestead exemption)

In re Louis E. Guynn, Ch. 7, No. L-91-1545C (Bankr. N.D. Iowa Aug. 17, 1993) (remainder interest cannot constitute homestead; amendment to exemptions not allowed)

In re Paul and Teresa Bishop, Ch. 7, No. 93-60176LW (Bankr. N.D. Iowa June 29, 1993) ("engaged in farming")

In re Gordon and Mary Jo Kunkle, Ch. 7, No. 93-60077LW (Bankr. N.D. Iowa June 4, 1993) (household goods include home and lawn maintenance equipment)

VII. CLAIMS, 2821-3000

A. In General, 2821-2850

In re Robert and Evelyn Brecunier, Ch. 13, No. L89-01142W (Bankr. N.D. Iowa June 13, 1994) (recomputation of property tax)

C. Administrative Claims, 2871-2890

In re Steven Heitshusen, Ch. 7, No. L-88-00779C (Bankr. N.D. Iowa June 14, 1994) (landlord's claim for rent as administrative expense)

In re Harold Mensching, Ch. 7, No. 92-61313LW (Bankr. N.D. Iowa March 4, 1994) (debtor's attorney fees as administrative expense)

In re Cregar's Autowerks, Inc., Ch. 7, No. L-92-00872C (Bankr. N.D. Iowa Dec. 10, 1993) (rent as necessary expense)

In re ASAP Printing, Inc., Ch. 7, No. 93-60443LW (Bankr. N.D. Iowa Nov. 24, 1993) (whether creditor is entitled to immediate payment of postpetition rent administrative expense claim)

In re ASAP Printing, Inc., Ch. 7, No. 93-60443LW (Bankr. N.D. Iowa July 26, 1993) (rent as administrative expense under § 365(d)(3))

E. Determination, 2921-2950

In re Donald and Mary Ann Pierce, Ch. 7, No. 93-61552KW (Bankr. N.D. Iowa March 4, 1994) (abstention from determination of tax liability)

In re Georgie and Laura Arnold, Ch. 12, No. Y87-00767W (Bankr. N.D. Iowa Feb. 14, 1994) (reconsideration of secured claim after confirmation of plan)

VIII. TRUSTEES, 3001-3020

IX. ADMINISTRATION, 3021-3250

A. In General, 3021-3060

In re Connolly Bros. Masonry, Inc., Ch. 7, No. L92-00555W (Bankr. N.D. Iowa May 25, 1994) (approval of compromise and settlement)

In re Larken Hotel Limited Partnership, Ch. 11, No. 94-10388KC (Bankr. N.D. Iowa April 28, 1994) (retroactive approval denied for postpetition payment of prepetition payroll obligations)

In re Bockes Brothers Farms, Inc., Ch. 11, No. 93-60881KW (Bankr. N.D. Iowa May 26, 1993) (cross-collateralization vs. cross-guarantees)

B. Possession, Use, Sale, or Lease of Assets, 3061-3100

In re Larken/LICO Properties, Ch. 11, No. 94-10539KC (Bankr. N.D. Iowa Aug. 2, 1994) (adequate protection and hotel revenues)

Dunbar v. City of Cedar Rapids (In re Cedar Rapids Meats, Inc.), Ch. 7, No. L-90-00445C, Adv. 93-1047LC (Bankr. N.D. Iowa Oct. 4, 1993) (distribution of proceeds of sale under § 724(b))

In re Bockes Brothers Farms, Inc., Ch. 11, No. 93-60881KW (Bankr. N.D. Iowa June 10, 1993) (adequate protection of cash collateral)

C. Debtor's Contracts and Leases, 3101-3130

In re Bockes Brothers Farms, Inc., Ch. 11, No. 93-60881KW (Bankr. N.D. Iowa Aug. 16, 1994) (cure of executory contract or adequate assurance of prompt cure)

In re Bockes Brothers Farms, Inc., Ch. 11, No. 93-60881KW (Bankr. N.D. Iowa April 4, 1994) (real estate contract in Iowa is executory contract)

E. Compensation of Officers and Others, 3151-3250

In re Moramerica Financial Corp., Ch. 11, No. 93-10268LC (Bankr. N.D. Iowa May 16, 1994) (compensation of attorney for preparation of fee application)

In re David and Marcia Snook, Ch. 13, No. 92-62249LW (Bankr. N.D. Iowa Jan. 11, 1994) (allowance of fees for debtors' attorney)

X. DISCHARGE, 3251-3440

A. In General, 3251-3270

Ewing v. Ewing (In re Larry Carson Ewing), Ch. 7, No. 92-11343LC, Adv. 92-1231LC (Bankr. N.D. Iowa May 21, 1993) (dischargeability of obligation for support)

B. Dischargeable Debtors, 3271-3340

In re Roger and Linda Waldrop, Ch. 13, No. L88-10797C (Bankr. N.D. Iowa May 24, 1994) (debtors' request to revoke Chapter 13 discharge)

Tama-Benton Coop v. Hennings (In re Denman and Gwendolyn Hennings), Ch. 11, No. 92-11755LC, Adv. 92-1269LC (Bankr. N.D. Iowa Feb. 8, 1994) (denial of motion to amend judgment; § 727(a)(2)(A) action requires direct proprietary interest in the property transferred)

Firstar Bank v. Ovel (In re Gerald Scott Ovel), Ch. 7, No. L-90-01183C, Adv. L-90-0199C (Bankr. N.D. Iowa Dec. 29, 1993) (aff'd N.D. Iowa 5/12/95) (overstated inventory and failure to explain loss of inventory)

Tama-Benton Coop v. Hennings (In re Denman and Gwendolyn Hennings), Ch. 11, No. 92-11755LC, Adv. 92-1259LC (Bankr. N.D. Iowa Dec. 22, 1993) (explanation of loss or concealment of third-party's property)

Dolezal v. Thomas (In re Virginia Thomas), Ch. 7, No. L-92-00524C, Adv. L-92-0115C (Bankr. N.D. Iowa Sept. 22, 1993) (aff'd N.D. Iowa 2/15/94) (objection to discharge denied, creditor to pay debtor's attorney fees)

Agristor Leasing v. Dinsdale (In re Thomas Dinsdale), Ch. 7, No. L-92-00669C, Adv. 92-1131LC (Bankr. N.D. Iowa Aug. 19, 1993) (aff'd N.D. Iowa 4/5/95) (denial of discharge based on fraudulent transfer)

C. Debts and Liabilities Discharged, 3341-3410

Siefken v. Siefken (In re Richard Siefken), Ch. 7, No. 93-10451LC, Adv. 93-1114KC (Bankr. N.D. Iowa June 14, 1994) (dischargeability of dissolution award of vehicle to custodial spouse)

Sullivan v. Bear (In re James Louis Bear), Ch. 7, No. 93-21585KD, Adv. 93-2194KD (Bankr. N.D. Iowa April 19, 1994) (assault as willful and malicious injury; § 523(a)(6))

Gearhart v. Gearhart (In re Terry Gearhart), Ch. 7, No. 93-10494LC, Adv. 93-1083KC (Bankr. N.D. Iowa March 29, 1994) (dischargeability of debt for support)

Trannel v. Pluemer (In re Michael David Pluemer), Ch. 7, No. 93-20214LD, Adv. 93-2171LD (Bankr. N.D. Iowa Jan. 11, 1994) (dischargeability of attorney fees arising in action for support)

Maynard Savings Bank v. Ahlhelm In re George Peter Ahlhelm), Ch. 7, No. L92-00617W, Adv. L92-0112W (Bankr. N.D. Iowa Dec. 7, 1993) (false financial statement, embezzlement, conversion)

Dutrac Comm. Credit Union v. Capps (In re Terry and Cynthia Capps), Ch. 7, No. 93-20229KD, Adv. 93-2106KD (Bankr. N.D. Iowa Nov. 24, 1993) (false financial statement)

Ewing v. Ewing (In re Larry Ewing), Ch. 7, No. 92-11343LC, Adv. 92-1231LC (Bankr. N.D. Iowa Nov. 3, 1993) (whether payment owed under dissolution decree constitutes nondischargeable support; conversion of rent check)

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First Bank System v. Walderbach (In re Donna Walderbach), Ch. 7, No. L-92-00780C, Adv. 92-1135LC (Bankr. N.D. Iowa Aug. 31, 1993) (dischargeability of credit card debt)

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